

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Verizon Telephone Companies)	
)	WC Docket No. 03-157
Petition for Forbearance from the)	
Current Pricing Rules for the)	
Unbundled Network Element Platform)	
_____)	

**REPLY COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),¹ through the undersigned and pursuant to Federal Communications Commission (FCC or Commission) Rules 1.415 and 1.419,² hereby submits its reply comments in response to the *Public Notice*³ in the above-docketed proceeding.⁴ In these reply comments, USTA responds to comments filed by other interested parties.

To the extent that commenters in this proceeding argue that the Commission cannot forbear from its pricing rules because they claim Verizon has not demonstrated that the requirements of Section 10(d)⁵ of the Communications Act of 1934, as amended (Act), have

¹ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

² 47 C.F.R. §§ 1.415 and 1.419.

³ *Public Notice*, WC Docket No. 03-157, DA 03-2189 (rel. July 3, 2003) soliciting comment on Verizon's Petition for Expedited Forbearance From the Commission's Current Pricing Rules for the Unbundled Network Element Platform (*Public Notice*).

⁴ Verizon Telephone Companies Petition for Forbearance from the Current Pricing Rules for the Unbundled Network Element Platform, WC 03-157, filed July 1, 2003 (Petition).

⁵ 47 U.S.C. §160(d).

been met, USTA disagrees. There is nothing in Section 10(d) of the Act that prevents the Commission from forbearing from its pricing rules.

As many commenters aptly note, Section 10(d) of the Act states that the Commission may not forbear from applying the requirements of Section 251(c) or Section 271 “until it determines that those requirements have been fully implemented.”⁶ Yet, neither Section 251(c) nor Section 271 require the pricing for unbundled network elements (UNEs) to be set according to total element long-run incremental cost (TELRIC). Section 251(c) requires incumbent local exchange carriers to provide “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.”⁷ With regard to the pricing standards applicable to unbundling of network elements, the Act states that rates shall be “based on cost.”⁸ However, the Act does not designate a specific pricing structure or even state how the Commission should arrive at UNE rates based on cost. The Commission has wide latitude in determining what the cost of network elements is and it is free to establish a pricing structure other than TELRIC.⁹ Clearly, the Commission’s TELRIC pricing rules are not statutory.

⁶ *Id.*

⁷ 47 U.S.C. §251(c)(3).

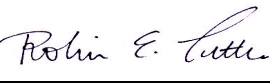
⁸ 47 U.S.C. §252(d)(1)(A)(i).

⁹ In its Petition, Verizon explains that the generality of the terms in Section 252(d)(1) of the Act “led the Supreme Court to conclude that the statute ‘leaves [pricing] methodology largely subject to the Commission’s discretion.’” Petition at 12, *citing Verizon Communications v. FCC*, 535 U.S. 467, 499-500 (2002) (“[T]he Act uses ‘cost’ as an intermediate term in the calculation of ‘just and reasonable rates,’” and “regulatory bodies required to set rates expressed in these terms have ample discretion to choose methodology.”) (internal citations omitted); *id.* at 500 (“[W]ords like ‘cost’ ‘give rate setting commissions broad methodological leeway; they say little about the ‘method employed’ to determine a particular rate.’”).

Whether or not Sections 251(c) and 271 have been fully implemented is not relevant in the Commission's consideration of Verizon's request for forbearance from the application of the Commission's TELRIC pricing rules to UNE-platform (UNE-P) facilities because Section 251(c)(3), Section 252(d)(1)(A)(i), and Section 271(c)(2)(B)(ii) do not require UNE rates to be set according to TELRIC. With regard to Verizon's request that the Commission forbear from applying its TELRIC pricing rules to UNE-P facilities, the Commission need not consider whether the requirements of Section 10(d) of the Act have been met. Accordingly, Section 10(d) does not prevent the Commission from forbearing from its TELRIC rules.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on September 2, 2003, the afore-mentioned Reply Comments of The United States Telecom Association was electronically mailed to the following parties.

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